FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 145

H. SANTAELLA & BROTHER, INC.,
Petitioner,

vs.

RAFAEL BUSCAGLIA, TREASURER, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

F. FERNANDEZ CUTAR,
Counsel for Petitioner.

MARIANO ACOSTA VELARDE,
DANIEL PELTON, JR.,
Of Counsel.

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Rico from Continental United States and paid the sum of $857,782.73 into the Treasury of Puerto Rico to cover the "additional" excise taxes levied by law.[1] In 1944 and 1945 the special statutes under which petitioner was compelled to pay said "additional" excise taxes were declared unconstitutional, and therefore null and void, by the Supreme Court of Puerto Rico.[2] Refunds of the "additional" excise were consequently decreed by the Insular Supreme Court in favor of several taxpayers.[3] Several months after the Supreme Court of Puerto Rico held invalid said taxing acts, petitioner filed with the Insular Treasurer, a written claim for refund of the sums paid by it as heretofore stated (R. 65). Ten months later, petitioner was notified that its claim for refund had been refused (R. 67). Petitioner then filed its complaint in the Tax Court of Puerto Rico, seeking a decree for refund.[4] The Tax Court dismissed the complaint for lack of jurisdiction (R. 88). On review[5] the Insular

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[1] The ordinary or normal excise on cigarettes has existed in the insular legislation since 1925 (Laws of Puerto Rico, 1925, p. 594). For certain purposes not here material, in 1939 the Legislative Assembly of Puerto Rico levied an "additional" excise tax on cigarettes, amounting to 50 cents on each one thousand cigarettes imported into the Island. (Laws of Puerto Rico, Special Session, 1939, page 100; amended by Act No. 149, approved May 6, 1940, Laws of Puerto Rico, 1940, page 900, and by Act No. 28 approved December 3, 1942, Laws of Puerto Rico, 2d & 3d Special Session, 1942, pages 118-120.) A detailed schedule showing the various payments made, dates of such payments, whether voluntarily or under protest, and other pertinent data, is annexed to this Petition. See Appendix, p.

[2] *Puerto Rico Tobacco Corporation* v. *Buscaglia, Treasurer,* 62 P. R. R. 782 (1944); and *Axton Fisher Tobacco Co.* v. *Buscaglia, Treasurer,* 65 P. R. R. 125 (1945).

[3] *Ibid.*

[4] The procedural right to invoke the jurisdiction of the Tax Court was predicated upon two alternative grounds, viz.: the provisions of an "Act for the Repayment of Taxes Improperly Collected," approved Feb. 12, 1904 (Laws of Puerto Rico 1904, p. 182) as amended by Act No. 10, approved March 29, 1945; or the provisions of the act creating the Tax Court of Puerto Rico, approved May 15, 1943 (Laws of Puerto Rico 1943, p. 600).

[5] Section 5 of the law creating the Tax Court of Puerto Rico provides for the review by the Supreme Court of all final judgments of the Tax Court. (Laws of Puerto Rico, 1943, p. 610.)

Supreme Court reversed the ruling of the Tax Court and held that the jurisdiction of said court was properly invoked by petitioner (R. 51). It further held that the "additional" excises paid by this petitioner had been "unlawfully collected" from it by the Treasurer (R. 47). However, a majority of the Court[6] was of the opinion that petitioner had not used the correct or appropriate procedure to seek redress. It held that refunds could be granted only if payment was shown to have been made under protest and if complaint for refund was shown to have been filed within the time limited by the statute providing for payment of taxes under protest.[7] Since petitioner, in making the various payments complained of, had not complied with either one or both of the requirements of the 1927 Act, the Insular Supreme Court held the right to refund totally barred. Regarding the statutes relied upon by petitioner,[8] said court ruled that the 1904 Act "did not establish any right in favor of the taxpayer, or contain any provision fixing a term for the filing of an application for refund" (R. 48); and, further, with reference to the alternative ground invoked by petitioner, viz., the 1943 Act creating the Tax Court of

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[6] The Supreme Court of Puerto Rico is composed of a Chief Justice and four Associate Justices (48 USCA Sec. 861; General Order No. 118, promulgated by Brigadier-General Davis, U. S. Army, on August 16, 1899). In the case at bar, only three of the five justices intervened.

[7] The majority of the Court *in this instance* held that the only procedural legislation available for recovery of taxes unlawfully collected was found in "An Act Providing for the Payment of Taxes under Protest, etc.," approved April 16, 1927 (Laws of Pureto Rico, 1927, p. 122-126), as amended by Act No. 17, approved November 21, 1941 (Laws of Puerto Rico, Special Session, 1941, p. 54). Thirteen months later, while this case was pending decision by the Circuit Court of Appeals, the full personnel of the Insular Supreme Court decided, as here contended by petitioner, that a taxpayer can seek redress under the provisions of the Acts of 1904 and 1943. See footnote 4, *ante*. A petition for rehearing, filed in the Court below called the attention of the Circuit Court of Appeals to this virtual reversal of opinion, but the court below refused to reconsider (R. 136, 145; 166 F. (2d) 970).

[8] See footnote 4, *ante*.

Puerto Rico, the Insular Supreme Court held that said Act did not revive barred rights to refunds, but only conferred jurisdiction on the Tax Court "to take cognizance of cases of refund of taxes" (R. 53).

On appeal, the Circuit Court of Appeals affirmed, essentially on the ground that there was no manifest or inescapable error in the decision of the Insular Supreme Court. However, one week before the Circuit Court handed down its opinion and judgment, the Supreme Court of Puerto Rico decided the case of *Gerardino* v. *Tax Court of Puerto Rico*,[9] holding that the Act of 1943 provides a judicial remedy for the recovery of excise taxes unlawfully collected, "without reference to the voluntary or involuntary nature of the payment" (R. 129). It further specifically held that under the Act of 1904 a refund could be obtained from the Treasurer of Puerto Rico if petition therefor was filed within the time limited by a 1946 amendment to said Act.[10] The Insular Supreme Court pointedly stated that, after the enactment of the act creating the Tax Court of Puerto Rico (the Act of 1943), the phrase "payment under protest" lost most of its magic; that prior thereto "the failure to pay under protest meant that no judicial remedy existed to recover overpayments," and that "the fact that a taxpayer who pays excise taxes under protest fails thereafter to avail himself of the remedy provided by Acts Nos. 8

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[9] The text of this opinion shall be found at pp. 118 to 135 of the record herein.

[10] It should be noted that, prior to 1946 (Act No. 261, Laws of P. R. 1946, p. 540) there was no time limitation for the filing with the Treasurer of applications for refund. The first and only legislative action directed towards fixing a time limitation occurred in 1946, as noted. Prior thereto, the Insular Legislature had implicitly recognized the fact that refunds under the Act of 1904 were being claimed and granted, and in 1945 it amended said Act so as to facilitate and expedite the procedure for the obtainment of refunds (Act No. 10, Laws of P. R. 1945, p. 32).

and 17 (the 1927 Acts) does not necessarily mean that he is also barred from utilizing the different remedy provided by par. 4 of the Act of 1943." [11]

It may not be amiss to call this Court's attention to the significant fact that the Gerardino decision was rendered by all the five justices of the Insular Supreme Court, while the decision in the case at bar was made by only three justices of said Court. At any rate, the Gerardino decision is, in substance and effect, a complete reversal of the position adopted by the insular court in this case. Such reversal of local doctrine having occurred *prior* to the decision of the appeal before the Circuit Court, it is obvious that the court below should have paid it the deference ordained by the rule as repeatedly stated by this Court.[12]

In consequence, petitioner filed in the Court below its petition for rehearing [13] calling the Court's attention to the local doctrine as established in the *Gerardino* case, and including a certified copy of the opinion rendered in said case.

The Circuit Court denied rehearing on the ground that the Gerardino decision was distinguishable from the case at bar in that Gerardino paid his excise taxes *after* the Act of 1943 had become effective, while petitioner herein had made his payments of the taxes in question *before* the passage of the Act of 1943. However, the court below evidently failed to grasp the full import of the Gerardino decision, which definitely established the taxpayers' *two* alternative and separate remedies for refund, viz., payment under protest and action for recovery under the Act of 1927; *or* payment, whether voluntary or under protest, and, within the time limitation of four years recently fixed, petition with the

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[11] R. 129.

[12] The most recent and pointed expression of this rule of deference may be found in *De Castro* v. *Board of Commissioners*, 322 U. S. 451 (1944).

[13] R. 106.

Treasurer for refund, and within 30 days after denial thereof, suit in the Tax Court to compel refund.[14] The fact that the Circuit Court misconstrued the *Gerardino* case was made evident a short time later by several decisions of the Insular Supreme Court. In the *Mayaguez Light, Power & Ice Co.* v. *Tax Court of Puerto Rico* and in *Ana Maria Sugar Co. Inc.* v. *Tax Court of Puerto Rico* and in *International General Electric S. A. Inc.* v. *Tax Court of Puerto Rico,*— all these cases decided March 31, 1948—the Supreme Court of Puerto Rico construed and applied the Act of 1904 and held, by decision of all five justices, that a taxpayer was entitled, under its provisions, to a refund of taxes paid during the years 1941, 1942, 1943 and 1944.[15] It will be noted that these decisions involved refunds of payments made prior to 1943. These latest decisions of the Insular Supreme Court interpreting the local tax refund statutes stand in direct conflict with the Circuit Court's construction, as expressed in its order denying rehearing.

Leave to file a second petition for rehearing having been granted, the attention of the Circuit Court was particularly called to these decisions of the Insular Supreme Court. Nevertheless, the Court below denied reconsideration without filing any further opinion.[16]

Statement of Jurisdiction

The jurisdiction of this Honorable Court is invoked under the provisions of Sec. 240 (a) of the Judicial Code of the United States, as amended by the Act of Feb. 13, 1925, C. 229, Sec. 1, 43 Stat. 938 (28 U. S. C. A. 347).

The judgment of the Circuit Court of Appeals for the First Circuit was entered on February 27, 1948, and is

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[14] R. 131-132.

[15] The text of the opinion delivered in the three cases cited will be found at p. 139 of the Record herein.

[16] The order denying the second petition for rehearing was entered April 23, 1948. R. 145.

officially reported at 166 F. (2d) 966-970. The first petition for rehearing was denied April 9, 1948 (R. 136), and the second petition for rehearing was denied April 23, 1948 (R. 145).

Questions Presented

1. A rule long established by numerous decisions of this Court is substantially to the effect that it is the duty of a federal appellate court [17] to ascertain and apply state or territorial law in a case in which such law is controlling. A necessary corollary of this doctrine requires the reversal on appellate review of any judgment of a federal court, ruled by local law and correctly applying that law when the judgment was rendered, if in the meantime the state or territorial courts have modified or clarified their former rulings and adopted different ones.

The primary question posed in the case at bar is whether or not the Circuit Court has decided an important question of local taxing law in a way openly in conflict with applicable local decisions. Here, the judgment of the Circuit Court was undoubtedly ruled by local law represented by the decision rendered by the Insular Supreme Court in this case. However, such "local law" was modified by that court prior to the judgment of the federal appellate court. Therefore, at the time when such judgment was rendered, it did not apply correctly the "local law,"—indeed, it was in conflict therewith.

The decision originally rendered by the Insular Supreme Court in this case held, in substance and effect, that a taxpayer in Puerto Rico, seeking refund of taxes illegally collected from him, had only *one* remedy to enforce his right, to wit, that provided in the Act of 1927 which re-

[17] Undoubtedly the Circuit Court of Appeals is a Federal appellate court.

quired payment under protest and filing of action to recover within a limited time. While the appeal taken to the Circuit Court was pending, the Insular Supreme Court reversed its ruling on this specific procedural point, and held that the taxpayer may resort to either of *two* available remedies, to wit, the procedure above outlined under the Act of 1927, or payment, either voluntary or under protest, and within four years thereafter application for refund under the provisions of the Act of 1904 to the Insular Treasurer, and, upon denial thereof, suit before the Tax Court of Puerto Rico as provided by the Act of 1943.

Inasmuch as petitioner has exercised its right to refund by following one of the two alternative procedures sanctioned by the latest ruling of the Insular Supreme Court, it is obvious that the judgment below, in denying relief, stands in open conflict with the applicable local law which, even at the time the judgment below was entered, approved of the procedure followed by this petitioner.

Such conflict was emphasized shortly thereafter by subsequent decisions of the local court. The Court below, when acquainted with the modification of local law as effected by the Insular Supreme Court, refused to recognize the change and attempted to take the case at bar out of the scope of the new doctrine by stating that the payments here sought to be recovered had been made before the passage of the Act of 1943, creating the Tax Court of Puerto Rico, while the payments involved in the decision establishing the new ruling had been made after the passage of said Act of 1943. But such distinction had by then been implicitly repudiated by the Insular Supreme Court in a line of decisions, granting refunds of taxes paid *before* 1943. When this line of decisions was brought to the attention of the Circuit Court it simply denied rehearing without opinion.

Therefore, the main question here presented is whether or not the judgment of the Circuit Court should be reversed as being in conflict with the applicable local law as construed and interpreted by the latest decisions of the Supreme Court of Puerto Rico.

Reasons Relied On for the Allowance of the Writ

This case involves the important question as to the deference that must be paid by the Circuit Court of Appeals to local decisions upon matters of purely local concern, and as to whether the Circuit Court of Appeals may superimpose its criterion and interpretation of local statutes over that given by the Supreme Court of Puerto Rico at the time of the disposition of the case by the Circuit Court; and as to whether a judgment of the Circuit Court is correct or erroneous when at the time of entering such judgment it is in conflict with the latest local decisions.

To hold, as the Circuit Court of Appeals did, that "it hardly makes sense to suppose that there co-existed another legal remedy available to taxpayers whether they paid under protest or not," and further to hold that the taxpayer in Puerto Rico has only *one* remedy for the refund of taxes illegally collected, notwithstanding the rulings of the Insular Supreme Court to the effect that such taxpayer has *two* alternative remedies to obtain tax refunds, is clearly a superimposition of criterion and a lack of the deference due to the understanding and interpretation of local taxing statutes by the highest insular court, as well as an inobservance or disregard of the long established and time honored doctrine of this Court to the effect that the decision of the highest court of a state or territory on matters of local law is conclusive, and that the Circuit Courts of Appeals must apply and ascertain the local law as de-

clared by the highest court of the state as of the time when the appeal is disposed of, and not as of the time when the judgment appealed from was rendered. The doctrine has been specifically applied in cases appealed to the Circuit Court of Appeals for the First Circuit from the Supreme Court of Puerto Rico. *De Castro* v. *Board of Commissioners*, 322 U. S. 451, 88 L. Ed. 1384.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be granted herein, and that the judgment of the Circuit Court of Appeals for the First Circuit in the case at bar be reversed.

F. FERNANDEZ CUYAR,
Attorney for Petitioner.

MARIANO ACOSTA VELARDE,
DANIEL PELLON LAFUENTE,
Of Counsel.

APPENDIX

That the petitioner paid the internal-revenue taxes to the Treasurer of Puerto Rico, some under protest and others voluntarily, as it appears in detail hereafter, to wit:

Date of Declaration	Int. Rev. Invoice No.	Amount in Thousands	Taxes Protested	Taxes Not Protested
1939				
6/21	10622	7,470		$3,735.00
6/29	10624	7,490		3,745.00
7/6	10626	9,500		4,750.00
7/13	10628	7,500		3,750.00
7/20	10630	7,490		3,745.00
7/28	10632	10,700		5,350.00
8/3	10634	8,200		4,100.00
8/15	10636	7,510		3,755.00
8/23	10639	1,493		746.50
8/23	10640	6,330		3,165.00
8/29	10642	4,680		2,340.00
9/13	10644	6,500		3,250.00
9/13	10647	6,440		3,220.00
9/27	10648	6,500		3,250.00
9/27	1251	6,500		3,250.00
10/10	1252	13,090		6,545.00
10/10	1255	1,000		500.00
10/26	1256	6,500		3,250.00
10/26	1260	7,750		3,875.00
10/31	1261	6,750		3,375.00
11/15	1263	6,750		3,375.00
11/15	1264	6,750		3,375.00
11/28	1267	6,750		3,375.00
11/28	1270	10,160		5,080.00
12/14	1272	6,750		3,375.00
12/14	1275	7,750		3,875.00
12/28	1277	6,760		3,880.00
12/28	1280	25,750		12,875.00
12/28	1281	2,000		1,000.00
1940				
1/23	1284	8,660		4,330.00
1/23	1287	8,650		4,325.00
1/30	1290	12,150		6,075.00
2/4	1291	8,650		4,325.00
2/14	1294	8,650		4,325.00
2/27	1295	8,650		4,325.00
2/28	1298	8,650		4,325.00
3/12	1300	8,650		4,325.00
3/13	14553	9,650		4,825.00
3/20	14556	9,650		4,825.00
3/28	14558	11,660		5,830.00
4/10	14560	7,650		3,825.00
4/10	14563	11,150		5,575.00
4/24	14565	9,150		4,575.00
4/24	14567	9,150		4,575.00
5/9	14571	11,150		5,575.00
5/9	14573	9,150		4,575.00
5/20	14576	11,150		5,575.00

Date of Declaration	Int. Rev. Invoice No.	Amount in Thousands	Taxes Protested	Taxes Not Protested
1940				
5/21	14578	9,150		4,575.00
5/28	14580	12,450		6,225.00
6/11	14584	9,150		4,575.00
6/11	14585	9,650		4,825.00
6/27	14588	9,610		4,805.00
6/27	14591	9,650		4,825.00
7/10	14593	8,650		4,325.00
7/10	14596	8,660		4,330.00
7/24	14597	9,950		4,975.00
7/24	14600	10,650		5,325.00
7/30	29404	10,450		5,225.00
8/11	29405	9,150		4,575.00
8/16	29408	9,150		4,575.00
8/27	29410	9,150		4,575.00
8/27	29413	9,490		4,745.00
9/11	29416	9,250		4,625.00
9/11	29419	9,500		4,750.00
9/25	29420	9,500		4,750.00
9/25	29423	12,750		6,375.00
10/10	29425	9,250	$4,645.00	
10/10	29428	9,250	4,625.00	
10/24	29430	9,250	4,625.00	
10/24	29433	9,500	4,750.00	
10/31	29434	9,510	4,755.00	
11/14	29438	9,500	4,750.00	
11/14	29441	9,500	4,750.00	
11/29	29442	10,010	5,005.00	
11/29	29445	9,500	4,750.00	
12/12	29448	10,510	5,255.00	
12/12	29449	9,500	4,750.00	
12/18	16254	10,000	5,000.00	
12/31	16256	9,500	4,750.00	
1941				
1/8	16261	17,950		8,975.00
1/8	16262	6,750		3,375.00
1/30	16267	14,010		7,005.00
1/30	16270	13,000		6,500.00
2/13	16272	9,500		4,755.00
2/13	16275	12,500		6,250.00
2/26	16278	9,500		4,750.00
2/26	16281	10,500		5,250.00
3/13	16284	11,740		5,870.00
3/13	16287	10,500		5,250.00
3/26	16290	11,500		5,750.00
3/26	16294	10,810		5,405.00
4/9	16295	10,810		5,405.00
4/9	16298	14,000		7,000.00
4/25	6251	10,560		5,280.00
4/25	6254	10,500		5,250.00
4/30	6256	10,460		5,230.00
5/7	6259	21,500	10,750.00	
5/13	6262	10,500	5,250.00	
5/29	6267	10,500	5,250.00	
5/29	6270	10,500	5,250.00	
6/12	6273	10,500	5,250.00	
6/12	6276	10,460	5,230.00	
6/26	6279	10,000	5,000.00	

Date of Declaration	Int. Rev. Invoice No.	Amount in Thousands	Taxes Protested	Taxes Not Protested
1941				
6/26	6283	10,460	5,230.00	
7/9	6287	9,540	4,770.00	
7/9	6290	13,000	6,500.00	
7/24	6292	11,350	5,675.00	
7/24	6293	1,150	775.00	
7/24	6296	950	475.00	
7/24	6297	12,300	6,150.00	
7/31	6299	10,800	$5,400.00	
8/9	5103	2,002.45	1,001.23	
8/9	5104	34,460	17,230.00	
8/29	5112	10,800	5,400.00	
9/10	5115	70	35.00	
9/12	5116	10,800	5,400.00	
9/12	5119	10,800	5,400.00	
9/25	5122	10,000	5,000.00	
9/25	5125	11,250	5,625.00	
10/9	5128	10,150	5,075.00	
10/15	5131	10,150	5,075.00	
10/23	5134	2,650	1,325.00	
10/23	5137	800	400.00	
10/23	5138	10,990	5,495.00	
10/30	5139	11,700	5,850.00	
11/12	5141	15,200	7,600.00	
11/12	5142	15,210	7,605.00	
11/28	5148	12,250	6,125.00	
12/5	20852	12,240	6,120.00	
12/11	20854	12,270	6,135.00	
12/16	20857	12,250	6,125.00	
12/20	20861	6,750	3,375.00	
12/31	20864	10,510	5,255.00	
1942				
1/9	20867	31,500	15,750.00	
1/29	20871	10,490	5,245.00	
2/10	20875	10,320	5,160.00	
2/10	20876	14,500	7,250.00	
2/18	20879	14,000	7,000.00	
2/26	20881	24,030	12,015.00	
3/11	20886	13,120	6,560.00	
3/26	20893	12,500	6,250.00	
3/26	20894	12,500	6,250.00	
4/2	20896	18,750	9,375.00	
4/9	20898	1,500	750.00	
4/9	20899	5,000	2,500.00	
4/9	20900	24,250	12,125.00	
4/17	33752	5,000	2,500.00	
4/28	33754	12,000	6,000.00	
4/28	33755	5,000	2,500.00	
4/28	33756	14,500	7,250.00	
4/28	33757	10,000	5,000.00	
5/8	33759	7,450	3,725.00	
5/12	33760	13,000	6,500.00	
5/27	33762	10,500	5,250.00	
5/27	33763	2,790	1,395.00	
5/27	33764	10,000	5,000.00	
6/2	33765	2,000	1,000.00	
6/24	33769	5,500	2,750.00	
6/24	33770	12,800	6,400.00	

Date of Declaration 1942	Int. Rev. Invoice No.	Amount in Thousands	Taxes Protested	Taxes Not Protested
6/29	33771	14,000	7,000.00	
7/7	33773	16,330	8,165.00	
8/19	33774	33,150		$16,575.00
9/28	33775	14,270		7,135.00
10/13	33776	50,230		25,115.00
		1,715,565.45	$422,661.23	$435,121.50

RECAPITULATION

Excise taxes paid under protest	$422,661.23
Excise taxes paid not under protest	435,121.50
	$857,782.73

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 145

R. SANTAELLA & BROTHER, INC.,
Petitioner,

vs.

RAFAEL BUSCAGLIA, TREASURER, ET AL.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This case arose on substantially similar facts and presents identical questions of law as the *Tristani et al.*, v. *Buscaglia, Treasurer, et al.*, case. Both cases were heard together on appeal and submitted on a single brief. Wherefore, petitioner respectfully submits as its brief in support of the petition for the writ of certiorari, the brief filed in the *Tristani* case.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 144

A. J. TRISTANI SUCRS., INC., *Petitioner*

v.

RAFAEL BUSCAGLIA, *Treasurer*, ET. AL.

No. 145

R. SANTAELLA & BROTHER, INC., *Petitioner*

v.

RAFAEL BUSCAGLIA, *Treasurer*, ET. AL.

On Petitions for Writs of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court of Puerto Rico (R. 29-39) and the opinion of the Supreme Court of Puerto Rico (R. 45-55) are contained in the record in English translation, and are not yet re-

ported. The opinion of the Circuit Court of Appeals (R. 99-106) is reported at 166 F. 2d 966. The additional opinion of the Circuit Court of Appeals on petition for rehearing (omitted from the record by inadvertence) is printed in Appendix B, *infra*, pp. 21-24, and is reported at 166 F. 2d 970.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 27, 1948. (R. 106.) The order of the Circuit Court of Appeals denying taxpayers' petition for rehearing was entered on April 9, 1948 (R. 135-136), and the order denying taxpayers' second petition for rehearing was entered on April 23, 1948 (R. 145). The petitions for writs of certiorari were filed on July 9, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below was correct in ruling that the decision of the insular Supreme Court was not manifestly erroneous in holding that taxpayers had allowed to lapse all such rights as may have been granted to them against the Treasurer of Puerto Rico under the controlling local statutes for refund of the insular excise taxes involved.

2. Whether the court below was correct in holding that the insular Supreme Court had not in later

cases in effect repudiated its interpretation of the applicable local statutes made in the instant cases.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra,* pp. 13-20.

STATEMENT

Taxpayers appealed to the court below from the respective judgments of the insular Supreme Court (R. 56, 89) affirming decisions rendered in each of the instant cases by the insular Tax Court (R. 39, 88), dismissing each taxpayer's complaint for refund of excise taxes alleged to have been unlawfully collected (R. 18-27, 75-85). Taxpayer, A. J. Tristani Sucrs., Inc. (usually referred to below as "Tristani"), claimed refund of taxes in the amount of $425,623.70 (R. 27), and taxpayer, R. Santaella & Brother, Inc. (usually referred to below as "Santaella"), of taxes in the amount of $857,782.73 (R. 84).

In both the insular Tax Court and the insular Supreme Court the case of taxpayer Tristani (No. 144) was decided upon the opinions rendered in those courts in the companion case of taxpayer Santaella (No. 145). Since the two cases arose on substantially similar facts and presented identical questions of law, they were heard together on the appeal to the court below, submitted on a single brief (R. 100), and single opinions were rendered in both, affirming the insular Supreme Court (R.

99-106) and denying petition for rehearing (Appendix B, *infra,* pp. 21-24).

In the *Santaella* case the insular Supreme Court stated the facts as follows, based upon the allegations of that taxpayer's complaint in the Tax Court (R. 45-47):

Taxpayer during the period from June 21, 1939, to October 13, 1942, imported cigarettes from the United States on which the Treasurer of Puerto Rico levied and collected the additional tax provided by laws of Puerto Rico, Act No. 22, approved June 18, 1939 (amended by Act No. 149, approved May 6, 1940) and Act No. 25, approved December 4, 1942. Taxes thus paid amounted to $857,782.73. (R. 45.) During the part of this period ending November 20, 1941, out of this total sum taxpayer paid these taxes under protest to the extent of $222,861.23. Beginning November 21, 1941, and up to July 7, 1942, taxpayer paid out of the total amount, also under protest, the sum of $199,880. The balance, amounting to $435,121.50, was paid, without protest, the last payment having been made on October 13, 1942. (R. 48.)

Subsequently, on October 11, 1944, taxpayer Santaella, relying on the provisions of the Act approved February 12, 1904, and Act No. 169, approved May 15, 1943, requested the Treasurer to refund the total sum thus paid by it as an additional tax on cigarettes. On August 6, 1945, the Treasurer issued an administrative decision deny-

ing the refund requested. (R. 45.) On August 29, 1945, nearly three years after the date of the last payment made by taxpayer (R. 49), taxpayer took an appeal to the insular Tax Court from the Treasurer's decision (R. 45).

The Treasurer thereupon moved to dismiss the appeal to the Tax Court on the ground, among others, that the complaint filed did not state facts sufficient to constitute a cause of action. (R. 45-46.) The Tax Court dismissed the complaint, and a reconsideration having been requested and denied, taxpayer petitioned for review of the Tax Court's decision by the insular Supreme Court. (R. 46.) The insular Supreme Court ruled that taxpayer had not timely availed itself of the remedy provided by the laws in force when it paid the taxes sought to be refunded, and, on the contrary, had allowed to lapse the statutory right of action granted to it by the local law and no statute had ever thereafter been enacted reviving this lost right. Hence, the insular Supreme Court, for these and other reasons stated in its opinion (R. 45-55), affirmed the decision of the Tax Court (R. 89).

Neither of the insular courts found the facts in the *Tristani* case (No. 144). The Tax Court found only that the questions of fact and law which it involved were substantially the same as those raised in the *Santaella* case, and since the questions of law in the latter case had been decided in favor of the Treasurer, also dismissed the *Tristani* complaint.

(R. 39.) This order of the Tax Court was affirmed by the insular Supreme Court "for the reasons stated" in its opinion in the *Santaella* case.[1] (R. 56.)

Upon taxpayers' appeal, the court below affirmed the insular Supreme Court in both cases (R. 99-106), and denied taxpayers' first and second petitions for rehearing (Appendix B, *infra,* pp. 21-24; R. 135-136, 145).

ARGUMENT

The "primary question" in these cases, as stated in the petitions for certiorari (p. 7), is "whether or not the Circuit Court [of Appeals] has decided an important question of local taxing law in a way openly in conflict with applicable local decisions." It may be noted at the outset that this is not one of those rare instances in which the court below has reversed the Supreme Court of Puerto Rico on an

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[1] The Tristani complaint contains the following allegations: From June 21, 1939, to October, 1942, Tristani imported cigarettes from the United States on which the Treasurer of Puerto Rico levied and collected the additional tax provided by Act No. 22, approved June 18, 1939 (amended by Act No. 149, approved May 6, 1940), and Act No. 25, approved December 4, 1942. (R. 19-20, 45.) The total payments made on this account aggregated $425,623.70, of which amount $141,595 was paid under protest (R. 20), the balance having been paid not under protest (R. 21-26). On October 17, 1944, taxpayer Tristani under the provisions of Act No. 169, approved May 15, 1943, requested the Treasurer to refund the total sum so paid. The Treasurer rejected this claim for refund on August 6, 1945. (R. 26.)

issue of local law. On the contrary, in these cases the court below merely held that the interpretation placed by the insular Supreme Court on its local tax laws (which that court characterized as a "morass" of conflicting or confusing statutes; see Appendix B, *infra*, p. 24) could not be regarded as manifestly erroneous. Petitioners' chief contention is that the interpretation made by the insular court in the instant cases—which concededly was followed by the court below—was repudiated in later decisions of the insular court, and that the court below, on rehearing, erroneously failed to follow the later interpretation. In our view, this contention is wholly without merit, and presents no basis for granting the petitions.

The insular legislative history in the matter of claims for refund of excise taxes illegally collected is set forth in full detail in the opinion of the court below. (R. 101-103.) From this, it appears that the status of taxpayers' claims for refund immediately prior to the enactment of Act No. 169, approved May 15, 1943 (Appendix A, *infra*, p. 17), establishing the insular Tax Court in place of the former Court of Tax Appeals, was as follows:

As to the payments which taxpayers had made under protest prior to November 21, 1941, their right to sue for refund under Act No. 8, approved April 19, 1927 (Appendix A, *infra*, p. 13), lapsed after the expiration of the one year term, computed

from the date of the respective payments. As to the payments which taxpayers made under protest between November 21, 1941, and October, 1942, their right to sue for refund lapsed after thirty days from the date of the respective payments, pursuant to the amendatory provision of Act No. 17, approved November 21, 1941. (Appendix A, *infra,* pp. 15, 16.) Further, as to the payments which were made without protest during these periods, the right to sue for refund, under the Acts just mentioned, was lost for two reasons, failure to protest at the time of payment and lapse of time. (R. 48-49, 52-53, 103.)

In their petitions to the Treasurer for refund and in their complaints filed in the Tax Court, taxpayers purported to be proceeding solely under the provisions of Act No. 169. (R. 14, 26, 32, 74, 83, 103.) However, for the first time in the insular Supreme Court and in the court below, they invoked an alleged alternative remedy based on the Act approved February 12, 1904 (Appendix A, *infra,* p. 13; R. 103), providing that whenever it is found upon the application of any taxpayer satisfactory to the Treasurer of Puerto Rico, that any moneys have been improperly collected by the Treasurer,

> upon the approval of the Governor, the Auditor of Porto Rico is hereby authorized to issue a settlement warrant in favor of the taxpayer

for the amount of such excess of the amount improperly paid.

Taxpayers argued that since the 1904 Act contained no time limitation, application to the Treasurer for refund might be made at any time after payment of the tax; that, if the tax was illegally collected, it then became the duty of the Treasurer to make the refund judicially enforceable by writ of mandamus; that only the fifteen year time limitation in the catch-all provision of Section 1864, Civil Code of Puerto Rico (1930 ed.), was applicable to the mandamus proceeding; and finally, that Act No. 169 of May 15, 1943, substituted the remedy of a complaint in the Tax Court for the mandamus remedy allegedly theretofore available to them to compel the Treasurer to perform his purported mandatory duty under the Act of February 12, 1904. (R. 103-104.)

The insular Supreme Court and the court below rejected these contentions, holding that the 1904 Act provided only for an administrative refund and afforded no consent to suit in the courts for enforcement of a refund. (R. 47-48, 104.) See *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 506, 507, 510; *Braun* v. *United States*, 8 F. Supp. 860, 864 (C. Cls.), certiorari denied, 295 U. S. 760. Hence, prior to the enactment of Act No. 169, approved May 15, 1943, taxpayers had lost all right to sue for refund under the laws in effect when the tax pay-

ments were made, and there remained only the question whether or not the insular legislature intended by Act No. 169, which for the first time conferred refund jurisdiction upon the Tax Court, to open all claims which were barred under prior laws. Both the insular Supreme Court and the court below reasoned that, in absence of explicit provision in Act No. 169, it would be unwarranted to infer that the legislature intended to revive defunct claims which had been extinguished or barred in the past by the laws in effect at the time tax payments had been made. (R. 50, 54-55, 105.) The court below considered this rule traditional with the courts of continental United States, and, in any event, a rule which the insular Supreme Court was free to adopt in the interpretation of a local act. (R. 105.) *De Castro* v. *Board of Comm'rs,* 322 U. S. 451, 455, 458-459; *Bonet* v. *Texas Co.,* 308 U. S. 463, 471; *Bonet* v. *Yabucoa Sugar Co., supra.*

Taxpayers concede that the court below applied the local law in accord with the interpretation accorded it by the insular court in its decision here, but point to the later decision of the insular Supreme Court in *Gerardino* v. *Tax Court,* decided February 20, 1948 (R. 118-135), rendered one week before the decision of the instant case by the court below (R. 100, 106) (which formed the basis of taxpayers' first petition for rehearing (R. 106-118)), and assert that the *Gerardino* case overruled the interpretation by the insular court of the local

law applied in its opinion in the instant case. However, the court below, in its opinion denying the petition for rehearing, distinguished the *Gerardino* case on its facts and found that the *Gerardino* case was in no way inconsistent with the interpretation made in the instant case. (Appendix B, *infra,* pp. 22-24.) In the *Gerardino* opinion, the insular court referred to its decision in the instant case no less than five times (R. 120, 122, 134), and in each instance either cited it with approval or distinguished it factually from the *Gerardino* case.

Similarly, the decision of the insular Supreme Court in *Mayaguez Light, Power & Ice Co.* v. *Tax Court,* decided March 31, 1948 (R. 139-144), upon which taxpayers based their second application for rehearing (R. 136-138), denied by the court below without opinion (R. 145), is not inconsistent with the instant case. The only point upon which the insular court passed in that case was whether the four year limitation upon applications for refunds enacted by Act No. 261, approved April 3, 1946 (Appendix A, *infra,* p. 19), applied retroactively to cases where taxpayers had filed their petitions in the Tax Court prior to the date of the enactment of the amendatory statute. In the *Mayaguez* case, the appeal was by taxpayer alone, and hence only the point raised by taxpayer was before the court. Certainly, the issue passed upon in the instant case, namely, whether Act No. 169 of 1943 was intended to revive stale and lapsed claims, was not before

the insular Supreme Court and it did not rule upon it.

CONCLUSION

The decision of the court below is correct, and no question warranting further review is presented. The petitions for writs of certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

THERON LAMAR CAUDLE,
Assistant Attorney General.

GEORGE A. STINSON,
ELLIS N. SLACK,
LEE A. JACKSON,
I. HENRY KUTZ,
Special Assistants to the Attorney General.

August 1948.

APPENDIX A

Laws of Puerto Rico:

Act approved February 12, 1904 (An Act for the Repayment of Taxes Improperly Collected):

SECTION 1.—Whenever it is found, either upon the application of any taxpayer satisfactory to the Treasurer of Porto Rico, or by the Auditor or Treasurer upon the revision and correction of the tax receipts, that any moneys have been collected by the Treasurer of Porto Rico improperly, or in excess of the proper amount, upon the approval of the Governor, the Auditor of Porto Rico is hereby authorized to issue a settlement warrant in favor of the taxpayer for the amount of such excess of the amount improperly paid.

Act No. 8, approved April 19, 1927:

SECTION 1.—Whenever a taxpayer believes that he should not pay any tax or part thereof, he shall, however, be obliged to pay the same in full upon request of the collector of internal revenue of his district, or of the official in charge of the collection of taxes, and shall he desire to make any claim, shall ask the said collector or the said official in charge of the collection of taxes, on making payment, to endorse the tax receipt, specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the tax-

payer and by the collector or officer in charge of the collection of taxes.

* * * * *

SECTION 3.—A taxpayer who shall have paid under protest the whole or part of any tax may, within the term of one year from the date of payment, sue the Treasurer of Porto Rico in an insular court of competent jurisdiction, or in the District Court of the United States for Porto Rico, to secure the return of the amount protested. The Attorney General shall represent the Treasurer of Porto Rico in such suits. Upon the filing of the complaint, if it be filed in an insular court, it shall follow the procedure, conditions and requirements provided by the Code of Civil Procedure in an ordinary action. When the case is ready for trial, the court shall fix the day for the trial thereof, on petition of any of the parties, with preference to any other matter pending before it. When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision, to be charged against any fund in the Treasury not otherwise appropriated plus interest on such amount at the rate of six (6) per cent per annum, computed from the date of the filing of the complaint in the court or on the petition of the taxpayer, the Treasurer shall credit him with the total amount to be returned, to be applied to the payment of any tax already due and unpaid or to become due in the future; *Provided,* That

said credit may be tansferred by the taxpayer, and then the Treasurer of Porto Rico shall credit it to the assignees, for all purposes of the law. Costs, expenses and attorney's fees shall be imposed in the discretion of the court in the same manner as in all other civil cases.

SECTION 4.—Any party may take an appeal in accordance with the provisions of the law for appeals in civil cases.

SECTION 5.—Any taxpayer filing a claim against the Treasurer of Porto Rico in accordance with the provisions of this Act, shall attach to the said claim the receipt for the tax paid under protest or a certified copy thereof.

Act No. 17, approved November 21, 1941:

SECTION 1.—Section 1 of Act No. 8, of April 19, 1927, entitled "An Act providing for the payment of taxes under protest; establishing a procedure to authorize the collection and return thereof; to repeal Act No. 9 of June 23, 1924, and Act No. 84, approved August 20, 1925, and for other purposes," is hereby amended to read as follows:

"SECTION 1.—Whenever a taxpayer believes that he should not pay any tax or part thereof, with the exception of property, inheritance, and income taxes, for the payment of which there is a specific procedure in the corresponding laws, the taxpayer shall, however, be obliged to pay the same in full upon request of the collector of internal revenue of his district or of the official in charge of the collection of

taxes, and should he desire to make any claim, he shall ask the said collector or the said official in charge of the collection of taxes, on making payment, to endorse the tax receipts, specifically stating what part of the tax is paid under protest and challenged by the taxpayer and the reasons on which he grounds the protest and challenge. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes."

SECTION 2.—Section 3 of the said Act No. 8 of April 19, 1927, is hereby amended to read as follows:

"SECTION 3.—A taxpayer who, in accordance with this Act and the exceptions established therein, shall have paid under protest the whole or part of any tax may, within the term of thirty (30) days from the date of payment, file a sworn complaint against the Treasurer of Puerto Rico in the corresponding district court; *Provided,* That the complaint shall not be for an amount or on any other grounds than those alleged in his protest when making payment. The Attorney General shall represent the Treasurer of Puerto Rico in such suits. Upon the filing of the complaint, if it be filed in an insular court, it shall follow the procedure, conditions, and requirements provided by the Code of Civil Procedure in an ordinary action. When the case is ready for trial, the court shall fix the day for the trial thereof, on petition of any of the parties, with preference over any other matter pending be-

fore it. When final judgment is rendered, if favorable to the taxpayer, the Treasurer of Puerto Rico shall proceed to return to him the amount directed in the judgment, to be charged against any funds available in the public treasury, plus interest on such amount at the rate of six (6) per cent per annum, computed from the date of the filing of the complaint in the court; or on the petition of the taxpayer, the Treasurer shall credit him with the total amount to be returned, to be applied to the payment of any tax already due and unpaid or to become due in the future; *Provided,* That said credit may be transferred by the taxpayer, and then the Treasurer of Puerto Rico shall credit it to the assignees, for all the purposes of law. Costs, expenses, and attorney's fees shall be imposed in the discretion of the court in the same manner as in all other civil cases."

Act No. 169, approved May 15, 1943:

* * * * *

Section 3.—

* * * * *

All actions, remedies, or proceedings which must be substantiated before the Tax Court of Puerto Rico shall be instituted by means of a sworn complaint of the claimant person or entity, formulated by the claimant or through a duly authorized legal representative, within the 30 days following the date of the service of notice thereof by the Treasurer of Puerto

Rico, in any of the following cases: (1) Assessment or reassessment of personal property, tangible or intangible, or of real property; (2) Appraisal made for inheritance tax purposes, and proper liquidation of each heir's share of the inheritance, as well as the amount of the tax payable on each inheritance tax case; (3) Liquidation or re-liquidation of the amount of the income tax, including notices of deficiencies or of any other nature; (4) Refusals to return any tax improperly paid, or paid in excess, or otherwise unlawfully collected; (5) Request for payment by the Treasurer of Puerto Rico by virtue of any excise or license taxes, or any other tax or impost not previously specified; *Provided,* That the period of 30 days to which this section refers shall be suspended if during said period the Treasurer is asked for a reconsideration of his decision and he grants such reconsideration, in which case, the said period of thirty days, already started to run, shall continue to be reckoned from the date on which the Treasurer serve notice of his final decision on the incident of reconsideration upon the interested party; * * *

* * * * *

SECTION 4.—The Tax Court shall have exclusive jurisdiction to take cognizance of all cases of revision of the assessment or reassessment of personal property, tangible or intangible, or of real property, and of all actions, proceedings, special or extraordinary remedies, and claims of any kind, relating to or affecting the levying, collection, payment, re-

turn, or reimbursement of all kinds of taxes, including excise and income taxes, the Victory Tax, inheritance and license taxes, and any other taxes or imposts, as well as to take cognizance of taxes improperly paid, or paid in excess, or unlawfully collected, the return of which may have been refused by the Treasurer. This jurisdiction, however, cannot be pleaded before the court by any person until there has been a proper administrative decision in the matter on the part of the Treasurer of Puerto Rico, according to law.

Act No. 10, approved March 29, 1945:

SECTION 1.—Section 1 of the Act entitled "An Act for the repayment of taxes improperly collected," approved February 12, 1904, is hereby amended to read as follows:

"SECTION 1. Whenever it is found, either upon the application of a taxpayer to the satisfaction of the Treasurer of Puerto Rico, or upon investigation by the Auditor or Treasurer upon making the revision and correction of the tax receipts, that any moneys have been collected by the Treasurer of Puerto Rico improperly, or in excess of the proper amount, the Auditor of Puerto Rico is hereby authorized to issue a settlement warrant in favor of the taxpayer for the amount of such excess or the amount improperly paid."

Act No. 261, approved April 3, 1946:

SECTION 1.—Section 1 of Act entitled "An Act for the repayment of taxes improperly col-

lected," approved February 12, 1904, as amended by Act No. 10, approved March 29, 1945, is hereby amended to read as follows:

"SECTION 1.—Whenever it is found, either upon the application of a taxpayer to the satisfaction of the Treasurer, or upon investigation by the Auditor or Treasurer upon making the revision and correction of the tax receipts, that any moneys have been collected by the Treasurer of Puerto Rico improperly, or in excess of the proper amount, the Auditor is hereby authorized to issue, with the approval of the Treasurer, a settlement warrant in favor of the taxpayer for the amount of such excess or the amount improperly paid; *Provided,* That repayment of taxes improperly collected, or in excess of the proper amount, shall not be granted after four (4) years have elapsed since the payment or [sic] said taxes, unless before the expiration of the said four (4) years, the taxpayer requests in writing from the Treasurer the repayment thereof."

APPENDIX B

Opinion of the court below on petition for rehearing, reported 166 F. 2d 970.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIRST CIRCUIT

OCTOBER TERM, 1947

No. 4272.

A. J. TRISTANI SUCRS., INC., *Plaintiff, Appellant,*

v.

RAFAEL BUSCAGLIA, *Treasurer,* ET AL., *Appellees.*

No. 4273.

R. SANTAELLA & BROTHER, INC.,

v.

SAME.

Appeals from the Supreme Court of Puerto Rico.

Before MAGRUDER, MAHONEY AND WOODBURY, JJ.

Mariano Acosta Velarde, with whom *Daniel Pellon Lafuente* was on brief, for appellants.

I. Henry Kutz, Special Assistant to the Attorney General, with whom *Theron L. Caudle,* Assistant

Attorney General, *Helen R. Carloss,* and *Lee A. Jackson,* Special Assistants to the Attorney General, *Mastin G. White,* Solicitor, Department of the Interior, and *Irwin W. Silverman,* Chief Counsel, Division of Territories and Island Possessions, Department of the Interior, were on brief, for appellees.

OPINION OF THE COURT.

On Petition for Rehearing.

April 9, 1948.

MAGRUDER, J. Appellants have filed a petition for rehearing, in which they call our attention to *Gerardino* v. *Tax Court of Puerto Rico,* decided by the Supreme Court of Puerto Rico on February 20, 1948, which was only one week before we handed down our decision in the above-entitled cases. It is claimed that in the *Gerardino* case the Supreme Court of Puerto Rico has given an interpretation to the applicable local statutes which in effect constitutes a repudiation of that court's reasoning, which we accepted, in the *Tristani and Santaella* cases.

We have examined the *Gerardino* opinion with care, and do not find that it in any way weakens the force of the earlier cases. Indeed, at several points in its opinion, the Supreme Court of Puerto Rico cites with approval its decision in the *Tristani* and *Santaella* cases. The crucial point in the

Gerardino case, differentiating it from the earlier cases, is that Gerardino paid his tax in 1944, which was after Act 169 of 1943 had become effective. In such a case, the court concludes from the perplexing statutes that the taxpayer has two alternative remedies when the Treasurer makes demand for the payment of a tax: (1) He may make payment under protest and sue in the Tax Court for refund within thirty days after the date of the Treasurer's demand, which is the "administrative decision" required by § 4 of Act 169 to give jurisdiction to the Tax Court (see paragraph 5 of § 3 of Act 169); or (2) he may make payment, whether voluntarily or under protest, after which he may within four years of the date of payment file a petition with the Treasurer for refund, and then sue in the Tax Court within thirty days after the service of notice of the administrative decision of the Treasurer denying the refund petition (see paragraph 4 of § 3 of Act 169). In the *Tristani* and *Santaella* cases, the taxpayers had made their payments of the taxes in question before the passage of Act 169 of 1943. Their right to sue for refunds had lapsed, under the applicable acts in force prior to the passage of Act 169, for the reasons set forth at length in our opinion of February 27, 1948. This conclusion is fortified by the further comments of the Supreme Court of Puerto Rico in the *Gerardino* case. In addition, that court specifically noted that the *Gerardino* case was not concerned with the point

decided in the *Tristani* and *Santaella* cases, which was that Act 169 was not intended "to revive causes of action which were barred, both as to right and remedy, because the taxpayer did not avail himself in time of the remedy provided by the laws in force at the time of payment of the sums he was now claiming."

We note sympathetically the remarks of the Supreme Court of Puerto Rico at the close of its opinion in the *Gerardino* case, to the effect that there is obvious need for "a plain, uniform and integrated procedural statute for all tax litigation" which will eliminate the "series of elaborate booby traps" now lurking in a "morass" of conflicting or confusing statutes.

The petition for rehearing is denied.

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